

Tenzer-Fuchs v. Buy and Sell Fitness, L.L.C.

Index № 21-CV-04938 (GRB-SIL)

NEW YORK STATE SUPREME COURT
COUNTY OF NASSAU

-----X Index № 2:21-cv-04938

MICHELLE TENZER FUCHS

Plaintiff(s)

ANSWER

-against-

BUY AND SELL FITNESS, L.L.C.

Defendant(s)

Hon. Steven I. Locke

-----X Hon. Gary R. Brown, MG

Defendant BUY AND SELL FITNESS, L.L.C., by and through it's attorney,
Marshal Shichtman & Associates, P.C., hereby submits the instant Answer and
Counterclaims to the Complaint:

1. Denies the allegations made in paragraph one of the complaint, dated
September 1, 2001 ("Complaint").
2. Denies information sufficient to form an opinion or belief as to the contents
of paragraph two.
3. Denies the allegations made in paragraph three, four, and five.
4. Denies the allegations made in paragraph six through 10, regarding
jurisdiction and venue.
5. Neither admits nor denies the allegations made in paragraphs 11 through
23, inclusive of subparagraphs A-Q.
6. Admits the allegations contained in paragraphs 24 through 26.
7. Denies the allegations contained in paragraph 27.
8. Denies information sufficient to form an opinion or belief as to the
allegations contained in paragraphs 28 through 39.
9. Denies the allegations contained in paragraph 40 and 41.

10. Denies information sufficient to form an information and belief as to the contents of paragraph 42.
11. Denies the contents of paragraphs 43, inclusive of subparts A through C, and 44.
12. Neither admits nor denies the contents contained in paragraph 45.
13. Denies the contents of paragraph 46, inclusive of subparts A through F, and 47.
14. Neither admits nor denies the allegations contained in paragraph 48.
15. Denies the allegations contained in paragraph 49.
16. Denies the allegations contained in paragraphs 50 through 56.
17. In answering the allegations contained in paragraph 57 of the Complaint, repeats and realleges the answers and denials contained in paragraphs 1 through 16 hereof as if the same were more fully set forth herein.
18. Neither admits nor denies the allegations contained in paragraphs 58 through 61.
19. Denies the allegations contained in paragraphs 62 through 64.
20. In answering the allegations contained in paragraph 65 of the Complaint, the defendant repeats and realleges the answers and denials contained in paragraphs 1 through 19 herein.
21. Neither admits nor denies the allegations contained in paragraph 66 and 67.
22. Denies the allegations contained in paragraphs 68 and 69.

23. Neither admits nor denies the allegations contained in paragraphs 70 and 71.
24. Neither admits nor denies, and denies, the allegations contained in paragraph 72.
25. Denies the allegations contained in paragraph 73, inclusive of subparts A through C, and 74 through 80.
26. In answering the allegations contained in paragraph 81 of the Complaint, the defendant repeats and realleges the answers and denials contained in paragraphs 1 through 25 herein.
27. Neither admits nor denies the allegations contained in paragraphs 82 and 83.
28. Denies the allegations contained in paragraphs 84 through 86, 87, inclusive of subparts A through C, and 88 through 92, inclusive of subparts A through H, and 93.
29. In answering the allegations contained in paragraph 94 of the Complaint, the defendant repeats and realleges the answers and denials contained in paragraphs 1 through 28 herein.
30. Denies the allegations contained in paragraph 95.
31. Admits the allegations contained in paragraph 96.

As and for a first separate complete affirmative defense

32. The Complaint and all allegations therein failed to state a claim upon which relief can be granted.

As and for a second separate and complete affirmative defense

33. The Court lacks jurisdiction over the defendant herein.

AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

34. The claims herein are barred based upon unclean hands on the basis that plaintiff is not entitled to equitable relief herein.

AS AND FOR A FOURTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

35. Plaintiff is estopped from asserting its claims based upon the failure to exhaust administrative remedies.

36. According to public records, plaintiff and her counsel have commenced a substantial amount of similar lawsuits, no less than 87, including but not limited to the following:

Michelle Tenzer-Fuchs is a plaintiff in 87 cases.

36.1. 2:20-cv-03075-JMA-SIL Tenzer-Fuchs v. Bijora, Inc. filed
07/09/20 closed 11/04/20

36.2. 2:20-cv-03076-JS-ST Tenzer-Fuchs v. Stitch Fix, Inc.
filed 07/09/20 closed 11/03/20

36.3. 2:20-cv-03077-GRB-AYS Tenzer-Fuchs v. Vita-Mix
Corporation filed 07/09/20 closed 11/09/20

- 36.4. 2:20-cv-03148-JMA-ST Tenzer-Fuchs v. Unilever United States, Inc. filed 07/15/20 closed 01/12/21
- 36.5. 2:20-cv-03149-GRB-ARL Tenzer-Fuchs v. JWH Holdings, LLC filed 07/15/20 closed 09/14/20
- 36.6. 2:20-cv-03150-JMA-SIL Tenzer-Fuchs v. Colonel Littleton, Ltd, Inc. filed 07/15/20 closed 01/19/21
- 36.7. 2:20-cv-03151-JS-ARL Tenzer-Fuchs v. Gordon Brush Mfg. Co., Inc. filed 07/15/20 closed 09/11/20
- 36.8. 2:20-cv-03552-SJF-ARL Tenzer-Fuchs v. Sleep Number Corporation filed 08/06/20 closed 12/15/20
- 36.9. 2:20-cv-03599-BMC Tenzer-Fuchs v. Snow Teeth Whitening, LLC filed 08/10/20 closed 11/03/20
- 36.10. 2:20-cv-03669-JS-AKT Tenzer-Fuchs v. SuperMe, LLC filed 08/13/20 closed 11/20/20
- 36.11. 2:20-cv-03704-GRB-ST Tenzer-Fuchs v. Tri-Star Products, Inc filed 08/14/20 closed 10/20/20
- 36.12. 2:20-cv-03706-JS-ST Tenzer-Fuchs v. Angel Brinks Fashion, LLC filed 08/14/20 closed 03/12/21
- 36.13. 2:20-cv-03734-JMA-ARL Tenzer-Fuchs v. Sleeping Well, LLC filed 08/17/20 closed 01/27/21
- 36.14. 2:20-cv-03742-AMD-ST Tenzer-Fuchs v. Live Tinted, Inc filed 08/17/20 closed 12/07/20

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- 36.15. 2:20-cv-03801-GRB-ARL Tenzer-Fuchs v. DACM Digital, LLC
filed 08/19/20 closed 03/15/21
- 36.16. 2:20-cv-03803-WFK-ARL Tenzer-Fuchs v. Dr. Squatch, Inc
filed 08/19/20 closed 10/27/20
- 36.17. 2:20-cv-03822-SJF-ST Tenzer-Fuchs v. Cot'n Wash, Inc
filed 08/20/20 closed 09/25/20
- 36.18. 2:20-cv-03823-JMA-AYS Tenzer-Fuchs v. Blade Mobile Air
Mobility, Inc filed 08/20/20 closed 03/01/21
- 36.19. 2:20-cv-03873-JMA-ST Tenzer-Fuchs v. Princess Polly USA,
Inc filed 08/21/20 closed 02/18/21
- 36.20. 2:20-cv-03917-SJF-ARL Tenzer-Fuchs v. Kitchen Kapers, Inc
filed 08/24/20 closed 11/02/20
- 36.21. 2:20-cv-04029-JMA-ARL Tenzer-Fuchs v. Miele, Incorporated
filed 08/28/20 closed 02/19/21
- 36.22. 2:20-cv-04030-BMC Tenzer-Fuchs v. Electrolux Home
Products, Inc. filed 08/28/20 closed 10/21/20
- 36.23. 2:20-cv-04031-SJF-ARL Tenzer-Fuchs v. Fisher & Paykel
Appliances, Inc. filed 08/28/20 closed 01/21/21
- 36.24. 2:20-cv-04032-JS-AKT Tenzer-Fuchs v. Franke Kitchen
System, LLC filed 08/28/20 closed 12/18/20
- 36.25. 2:20-cv-04112-JMA-AYS Tenzer-Fuchs v. SixThreeZero
Bicycle Company, LLC filed 09/02/20 closed 12/02/20

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- 36.26. 2:20-cv-04113-GRB-ST Tenzer-Fuchs v. Specialized Bicycle Components, Inc. filed 09/02/20 closed 11/05/20
- 36.27. 2:20-cv-04114-NGG-AYS Tenzer-Fuchs v. Huffy Corporation filed 09/02/20
- 36.28. 2:20-cv-04115-SJF-ST Tenzer-Fuchs v. Dorel U.S.A., Inc. filed 09/02/20 closed 01/11/21
- 36.29. 2:20-cv-04384-SJF-ARL Tenzer-Fuchs v. BMG Rights Management (US) LLC filed 09/18/20 closed 01/04/21
- 36.30. 2:20-cv-04385-WFK-AKT Tenzer-Fuchs v. Custommade, Inc. filed 09/18/20 closed 01/19/21
- 36.31. 2:20-cv-04386-JS-ARL Tenzer-Fuchs v. Lindblad Expeditions, LLC filed 09/18/20 closed 11/12/20
- 36.32. 2:20-cv-04841-RRM-AYS Tenzer-Fuchs v. The Beard Club, Inc. filed 10/08/20 closed 10/14/20
- 36.33. 2:20-cv-04849-JS-AKT Tenzer-Fuchs v. BA Sports Nutrition, LLC filed 10/08/20 closed 02/19/21
- 36.34. 2:20-cv-04850-ENV-AKT Tenzer-Fuchs v. Harry's.com, Inc. filed 10/08/20 closed 12/17/20
- 36.35. 2:20-cv-05065-SJF-AKT Tenzer-Fuchs v. Sublease Exchange.com, Inc. filed 10/21/20 closed 02/08/21
- 36.36. 2:20-cv-05066-FB-ARL Tenzer-Fuchs v. Swapalease, Inc. filed 10/21/20 closed 02/11/21

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- 36.37. 2:20-cv-05384-RRM-AKT Tenzer-Fuchs v. The Proctor & Gamble Company filed 11/05/20 closed 06/24/21
- 36.38. 2:20-cv-05385-JMA-ARL Tenzer-Fuchs v. Babbel, Inc. filed 11/05/20 closed 03/03/21
- 36.39. 2:20-cv-05386-DG-SIL Tenzer-Fuchs v. Disney DTC, LLC filed 11/05/20 closed 04/21/21
- 36.40. 2:20-cv-05388-NGG-JMW Tenzer-Fuchs v. Freestyle Brands, LLC filed 11/06/20 closed 05/24/21
- 36.41. 2:20-cv-05708-EK-AKT Tenzer-Fuchs v. VF Jeanswear, LP filed 11/23/20 closed 05/17/21
- 36.42. 2:20-cv-05908-SJF-ST Tenzer-Fuchs v. Rugs.com, LLC filed 12/04/20 closed 02/25/21
- 36.43. 2:20-cv-06286-SJF-ARL Tenzer-Fuchs v. OddityMall filed 12/28/20 closed 03/17/21
- 36.44. 2:20-cv-06287-JMA-ST Tenzer-Fuchs v. Joseph Enterprises, Inc. filed 12/28/20 closed 07/23/21
- 36.45. 2:21-cv-01116-FB-ARL Tenzer-Fuchs v. E.L.F Cosmetics, Inc. filed 03/02/21 closed 10/18/21
- 36.46. 2:21-cv-01120-JMA-JMW Tenzer-Fuchs v. Fred Meyer Jewelers, Inc filed 03/02/21
- 36.47. 2:21-cv-01121-JMA-AKT Tenzer-Fuchs v. Baggallini, Inc. filed 03/02/21 closed 05/05/21

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- 36.48. 2:21-cv-01123-SJF-JMW Tenzer-Fuchs v. Pier 1 Imports
Online, Inc. filed 03/02/21 closed 06/01/21
- 36.49. 2:21-cv-01124-JMA-AKT Tenzer-Fuchs v. Monster Worldwide,
Inc. filed 03/02/21 closed 05/17/21
- 36.50. 2:21-cv-01176-GRB-AYS Tenzer-Fuchs v. CarGurus, Inc.
filed 03/05/21 closed 06/03/21
- 36.51. 2:21-cv-01177-JMA-AYS Tenzer-Fuchs v. Eleven Australia
North America, Inc. filed 03/05/21 closed 03/09/21
- 36.52. 2:21-cv-01178-SJF-AKT Tenzer-Fuchs v. Alan Furman & Co.,
Inc. filed 03/05/21 closed 04/26/21
- 36.53. 2:21-cv-01179-JMA-AYS Tenzer-Fuchs v. Temp-tations, LLC
filed 03/05/21 closed 09/23/21
- 36.54. 2:21-cv-01336-JS-ARL Tenzer-Fuchs v. Newgh, LLC filed
03/12/21 closed 08/02/21
- 36.55. 2:21-cv-01338-JS-ARL Tenzer-Fuchs v. Lily Silk Bedding,
Inc filed 03/12/21 closed 07/16/21
- 36.56. 2:21-cv-01425-JS-JMW Tenzer-Fuchs v. Ammonita, Inc.
filed 03/17/21 closed 06/21/21
- 36.57. 2:21-cv-01445-AMD-ST Tenzer-Fuchs v. Paul Miller Auto
Group, LLC filed 03/18/21 closed 07/26/21
- 36.58. 2:21-cv-01446-JS-AKT Tenzer-Fuchs v. Kellogg Company
filed 03/18/21 closed 06/23/21

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- 36.59. 2:21-cv-01785-GRB-ST Tenzer-Fuchs v. Maplebear, Inc.
filed 04/01/21 closed 06/22/21
- 36.60. 2:21-cv-01913-SJF-ARL Tenzer-Fuchs v. Vrai & Oro, LLC
filed 04/09/21 closed 06/16/21
- 36.61. 2:21-cv-01914-ARR-SIL Tenzer-Fuchs v. Rare Carat, Inc.
filed 04/09/21
- 36.62. 2:21-cv-01915-GRB-AKT Tenzer-Fuchs v. Four Mine, Inc.
filed 04/09/21 closed 07/06/21
- 36.63. 2:21-cv-02064-JS-SIL Tenzer-Fuchs v. Nestle Waters North
America Holdings, Inc filed 04/15/21 closed 07/23/21
- 36.64. 2:21-cv-02065-JS-ARL Tenzer-Fuchs v. Cettire, Inc. filed
04/15/21 closed 08/09/21
- 36.65. 2:21-cv-02066-GRB-ST Tenzer-Fuchs v. Mindvalley, Inc.
filed 04/15/21 closed 08/20/21
- 36.66. 2:21-cv-02067-BMC Tenzer-Fuchs v. Obvious Wines, LLC
filed 04/15/21 closed 06/09/21
- 36.67. 2:21-cv-02237-JMA-AKT Tenzer-Fuchs v. Eredi Pisano USA,
Inc. filed 04/22/21 closed 08/05/21
- 36.68. 2:21-cv-02487-GRB-JMW Tenzer-Fuchs v. Bloom Nutrition,
LLC filed 05/04/21
- 36.69. 2:21-cv-02488-JS-SIL Tenzer-Fuchs v. Kalahari Resorts, LLC
filed 05/04/21

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- 36.70. 2:21-cv-02576-GRB-SIL Tenzer-Fuchs v. Forbidden Planet IP Holdings, LLC filed 05/07/21 closed 09/02/21
- 36.71. 2:21-cv-02577-GRB-SIL Tenzer-Fuchs v. Mattel, Inc. filed 05/07/21 closed 07/08/21
- 36.72. 2:21-cv-02578-ARR-AYS Tenzer-Fuchs v. WineAccess, Inc. filed 05/07/21 closed 08/13/21
- 36.73. 2:21-cv-02580-JMA-SIL Tenzer-Fuchs v. Wine Chateau Marketplace, LLC filed 05/07/21 closed 09/17/21
- 36.74. 2:21-cv-02889-GRB-SIL Tenzer-Fuchs v. Beall's, Inc. filed 05/21/21 closed 10/12/21
- 36.75. 2:21-cv-03047-GRB-JMW Tenzer-Fuchs v. TrueCar, Inc. filed 05/28/21 closed 06/30/21
- 36.76. 2:21-cv-03048-AMD-AKT Tenzer-Fuchs v. Symbiome, Inc. filed 05/28/21 closed 09/10/21
- 36.77. 2:21-cv-03051-JMA-SIL Tenzer-Fuchs v. CarSoup of Minnesota, Inc. filed 05/28/21 closed 08/26/21
- 36.78. 2:21-cv-03291-GRB-ARL Tenzer-Fuchs v. HoneyLove Sculptwear, Inc. filed 06/11/21 closed 09/29/21
- 36.79. 2:21-cv-03337-ARR-JMW Tenzer-Fuchs v. ZenB US, Inc. filed 06/14/21 closed 09/09/21
- 36.80. 2:21-cv-03454-JS-ST Tenzer-Fuchs v. Globallab Corp. filed 06/18/21 closed 10/12/21

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- 36.81. 2:21-cv-03731-JMA-ARL Tenzer-Fuchs v. Mango Stand, LLC
filed 07/02/21
- 36.82. 2:21-cv-03732-JMA-ST Tenzer-Fuchs v. Uzid LLC filed
07/02/21 closed 10/01/21
- 36.83. 2:21-cv-04936-JS-ST Tenzer-Fuchs v. BH Cosmetics, LLC
filed 09/01/21
- 36.84. 2:21-cv-04937-JS-AYS Tenzer-Fuchs v. Lux Skin Lab, LLC
filed 09/01/21 closed 10/25/21
- 36.85. 2:21-cv-04938-KAM-AKT Tenzer-Fuchs v. Buy and Sell
Fitness, LLC filed 09/01/21
- 36.86. 2:21-cv-04939-ENV-JMW Tenzer-Fuchs v. Do Vitamins, Inc.
filed 09/01/21
- 36.87. 2:21-cv-04941-BMC Tenzer-Fuchs v. Jaguar Land Rover North
America, LLC filed 09/01/21

37. Prior to the commencement of the lawsuit herein, Plaintiff made no effort to try to address the issues or attempt to resolve the issues in good faith.

38. Instead, Plaintiff and her counsel elected to commence this class action lawsuit, apparently solely as a means improperly to force Defendant to pay claimed damages to Plaintiff, with a resultant fee to Plaintiffs counsel.

As and for a FIRST COUNTERCLAIM

For Abuse of Process

39. Defendant repeats and realleges each and every allegation contained in paragraphs 36 through 38, inclusive of subparts 36.1 through 36.87 as if the same have been more fully set forth herein.

40. The failure of Plaintiff and her counsel to act in good faith and related attempts to try to force various defendants to pay damages, under the circumstances where Plaintiff and her counsel apparently have engaged in this type of conduct multiple times before, constitutes an abuse of process.

41. The elements of abuse of process are: i) regularly issued process, either civil or criminal, ii) an intent to do harm without excuse or justification, and iii) use of the process in a perverted manner to obtain a collateral objective.

42. Plaintiff has commenced 87 litigations, in this jurisdiction alone. It is respectfully put to the Court, how many people on this earth have commenced 87 litigations in their personal capacity.

43. Under information and belief, Plaintiff, and her counsel, have developed a side hustle as professional litigants.

44. Plaintiff has commenced 87 litigations, which meets the regularly issued process element. Plaintiff has shamelessly used Federal laws to protect and assist the disabled as a pretext and sham justification to enrich herself, and counsel, regarding products the Plaintiff may or may not actually use. And lastly, have used this quasi-legal business line to enrich themselves by forcing economic settlements. Thereby, Plaintiff has abused process.

45. As a result, Defendant has been damaged in an amount to be determined and requests that punitive damages also be assessed against Plaintiff and her counsel.

As and for a SECOND COUNTERCLAIM

For Malicious Prosecution

46. Defendant repeats and realleges each and every allegation contained in paragraphs 36 through 45, inclusive of subparts 36.1 through 36.87 as if the same have been more fully set forth herein.
47. To state a cause of action for malicious prosecution, the movant must demonstrate that the respondent initiated or prosecuted an action or proceeding against him which ended in the movant's favor and which was entirely lacking in probable cause and motivated by malice. Where the prosecution was civil in nature rather than criminal, there must be further proof that the plaintiff suffered some special injury. Special injury, in condensed sum and substance, is interference with personal or property rights.
48. In the instant case, the Plaintiff instituted the instant litigation, number 85 on the list of 87, where the Plaintiff sustained no damages, and did not even plead that the Plaintiff sustained actual damages, and under information and belief, was maliciously motivated by greed. The special damages are interference with the Defendant's property rights, namely the Defendant's website, which is property.

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49. As a result, Defendant has been damaged in an amount to be determined and requests that punitive damages also be assessed against Plaintiff and her counsel.

Dated: Friday, October 29, 2021
Carle Place, New York

Marshal Shichtman & Associates, P.C.

Marshal Shichtman, Esq.

By: Marshal Shichtman, Esq.
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